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UNCLAS SECTION 01 OF 02 PODGORICA 000206

SIPDIS

SENSITIVE  
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E.O. 12958: N/A  
TAGS: [PGOV](#) [PHUM](#) [KJUS](#) [MW](#)  
SUBJECT: INTERNATIONALS COMMENT ON DRAFT MONTENEGRO'S CONSTITUTION  
(C-RE7-00522)

REF: A. A) PODGORICA 032

[1](#)B. B) PODGORICA 100

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SENSITIVE BUT UNCLASSIFIED - PLEASE HANDLE ACCORDINGLY

[1](#)1. (SBU) SUMMARY: THE VENICE COMMISSION (VC), OF THE COUNCIL OF EUROPE (COE), AND THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR), HAVE COMMENTED ON MONTENEGROS DRAFT CONSTITUTION. BOTH CITE SHORTCOMINGS IN THE PROTECTION OF HUMAN RIGHTS, INSUFFICIENT GUARANTEES FOR THE INDEPENDENCE OF THE JUDICIARY, AND A LACK OF TECHNICAL CLARITY IN THE DRAFT. A PROLONGED "PUBLIC DISCUSSION" OF THE DRAFT HAS CONCLUDED, AND THE PARLIAMENT IS EXPECTED TO COLLATE THE COLLECTIVE PUBLIC AND INTERNATIONAL COMMENTS. INDICATIONS ARE GROWING THAT IT IS UNLIKELY THAT THE DRAFT WILL BE READY FOR A PARLIAMENTARY VOTE BEFORE THE FALL. UNRESOLVED TENSIONS IN THE RULING COALITION (REF B) ARE ALSO IMPAIRING MOVEMENT ON THE CONSTITUTION. END SUMMARY.

VENICE COMMISSION CRITICAL OF CONSTITUTION

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[1](#)2. (U) ON JUNE 5, THE COUNCIL OF EUROPE'S VENICE COMMISSION (COE - VC) ADOPTED ITS "INTERIM OPINION ON THE DRAFT CONSTITUTION OF MONTENEGRO" (FULL TEXT OF OPINION ON THE COE WEBSITE, [WWW.VENICE.COE.INT](http://WWW.VENICE.COE.INT)). THE VC SUCCINTLY CONCLUDED THAT: "THE DRAFT CONSTITUTION ... DOES NOT RAISE ISSUES OF COMPATIBILITY WITH COUNCIL OF EUROPE STANDARDS, WITH THE EXCEPTION OF (1) THE PROVISIONS ON THE APPOINTMENT, CAREER AND DISMISSAL OF JUDGES AND ON THE FUNCTIONS AND COMPOSITION OF THE JUDICIAL COUNCIL AND (2) THE NUMEROUS DEFECTS IN THE STRUCTURE AND CONTENT OF PART 2, HUMAN RIGHTS AND FREEDOMS." ADDITIONALLY, THE VC STATED THAT

"THE DRAFT CONSTITUTION REQUIRES SIGNIFICANT TECHNICAL AMENDMENTS." THE VC ALSO ADVISED "THE ADOPTION OF THE NEW CONSTITUTION SHOULD NOT BE RUSHED, AND SHOULD ONLY BE ENVISAGED ONCE THE TWO ISSUES STATED ABOVE ARE SETTLED IN A MANNER COMPATIBLE WITH THE EUROPEAN STANDARDS, AND ONCE THE TEXT REACHES A GOOD LEVEL OF DRAFTING TECHNIQUE."

#### JUDICIARY

13. (U) THE VC NOTED THAT THE CURRENT DRAFT CONSTITUTION STILL PLACES TOO MUCH POWER IN THE PARLIAMENT TO SELECT AND DISMISS JUDGES. THE VC RECOMMENDS THAT "JUDGES SHOULD BE APPOINTED BY THE HEAD OF STATE UPON THE PROPOSAL OF THE JUDICIAL COUNCIL OR DIRECTLY BY THE JUDICIAL COUNCIL." THE COMMISSION FURTHER OBSERVES "ELECTION BY PARLIAMENT (MOREOVER WITH NO QUALIFIED MAJORITY), ALBEIT UPON THE PROPOSAL OF THE JUDICIAL COUNCIL, IS A POLITICAL ACT WHICH IS INAPPROPRIATE TO ENSURE THE INDEPENDENCE OF THE JUDICIARY, AND DOES NOT COMPLY WITH EUROPEAN STANDARDS. DISMISSAL OF JUDGES BY PARLIAMENT, WHICH IS CURRENTLY FORESEEN IN ARTICLE 129, IS EVEN MORE PROBLEMATIC."

14. (SBU) THE VC OBJECTED TO THE METHOD BY WHICH THE DRAFT CONSTITUTION PROPOSES TO SELECT THE JUDICIAL COUNCIL, WHOSE MEMBERS (HALF FROM THE SITTING JUDICIARY) WOULD BE ELECTED AND DISMISSED BY PARLIAMENT. POST NOTES THAT AT BEST, THE PROPOSAL ONLY PUTS AT A SLIGHT REMOVE PARLIAMENT'S ABILITY TO EXERT UNDUE POLITICAL INFLUENCE ON THE SELECTION OF JUDGES. MOREOVER, THE CURRENTLY SEATED JUDGES ARE PART OF THE PROBLEM, AND WOULD LIKELY USE THE SAME CRITERIA -- CONNECTIONS AND NOT NECESSARILY COMPETENCE -- THAT PUT THEM ON THE BENCH.

#### HUMAN RIGHTS

15. (U) THE VC STATED THAT "THE DIFFERENCES BETWEEN THE CURRENT DRAFT CONSTITUTION AND THE ECHR (EUROPEAN CONVENTION ON HUMAN RIGHTS) ARE NOT MERELY TEXTUAL. CERTAIN FUNDAMENTAL GUARANTEES HAVE BEEN OMITTED, IN PART OR TOTALLY. IT IS RECALLED THAT THE

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MONTENEGRIN AUTHORITIES HAVE COMMITTED THEMSELVES TO PROVIDING IN THE NEW CONSTITUTION AT LEAST THE SAME LEVEL OF HUMAN RIGHTS PROTECTION WHICH WAS GUARANTEED BY THE 2002 CHARTER OF HUMAN RIGHTS, WHICH THE VENICE COMMISSION HAD FOUND TO PROVIDE FOR AN EXCELLENT LEVEL OF HUMAN AND MINORITY RIGHTS PROTECTION."

16. (U) THE VC NOTES THAT SOME RIGHTS, SUCH AS ASPECTS OF FREEDOM OF RELIGION OR THE RIGHT TO A FAIR TRIAL, ARE NOT COMPLETELY ADDRESSED, WITH IMPORTANT ELEMENTS NOT MENTIONED (E.G., FREEDOM OF ASSEMBLY IN CONNECTION WITH RELIGIOUS WORSHIP, OR THE RIGHT TO AN INTERPRETER IN A CRIMINAL TRIAL). SOME RIGHTS ARE NOT MENTIONED AT ALL, INCLUDING: AN ABSOLUTE PROHIBITION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT; AN ABSOLUTE PROHIBITION OF SLAVERY AND FORCED LABOR; AND THE RIGHT TO FREE ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES. CONVERSELY, THE DRAFT CONSTITUTION IMPERMISSIBLY RESTRICTS OTHER RIGHTS, SUCH AS THE BLANKET PROHIBITION ON POLITICAL ASSOCIATION IN

PUBLIC SERVICES, OR THE SIMILAR BAN ON POLITICAL ASSOCIATION AND ACTIONS BY FOREIGN NATIONALS (EVEN LONG-TERM RESIDENTS OF MONTENEGRO).

OSCE/ODIHR QUIETLY CONCURS WITH VC

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17. (SBU) THE OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR) HAS CHOSEN TO NOT MAKE ITS COMMENTS ON THE DRAFT CONSTITUTION PUBLIC; POST HAS HOWEVER OBTAINED A COPY OF THE ODIHR REPORT. (ODIHR HAS PUBLISHED AN ENGLISH TRANSLATION OF THE DRAFT CONSTITUTION AT [HTTP://WWW.OSCE.ORG/DOCUMENTS/MNT/2007/04/241\\_70\\_EN.PDF](http://www.osce.org/documents/MNT/2007/04/241_70_EN.PDF), HOWEVER.) THE ODIHR REPORT GENERALLY TRACKS THAT FROM THE VC; WHILE IT GOES INTO MORE DEPTH IN SOME LIMITED AREAS (GENERALLY IN THE AREA OF HUMAN RIGHTS), IT DOES NOT RAISE ANY ADDITIONAL AREAS OF CONCERN.

PUBLIC DISCUSSION CONCLUDES AFTER EXTENSION

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18. (SBU) THE PUBLIC DISCUSSION OF THE DRAFT CONSTITUTION CONCLUDED ON MAY 28, AFTER A 24 DAY EXTENSION OF A 30 DAY PERIOD FOR COMMENTS. MONTENEGRIN LAW SAYS THAT THE CONSTITUTIONAL BOARD IS RESPONSIBLE TO CONSIDER THE PROPOSALS, COMMENTS AND SUGGESTIONS, TAKE THE STAND ABOUT THEM, AND FORWARD THE (REVISED) DRAFT CONSTITUTION TO THE PARLIAMENT WITHIN 15 DAYS OF THE CLOSURE OF THE PUBLIC DISCUSSION; THAT JUNE 13 DEADLINE WILL CLEARLY BE MISSED. BEHIND THE DELAY IS THREE FACTORS: 1) MANY NEEDED CORRECTIONS ARE TECHNICALLY COMPLEX; 2) NUMEROUS ARTICLES REMAIN POLITICALLY CONTENTIOUS; AND 3) THE RULING COALITION ITSELF IS FRACTURED OVER NON-CONSTITUTIONAL ISSUES (REF B), AND HAS NOT FULLY ENGAGED THE OPPOSITION ON THE CONSTITUTION.

19. (SBU) THE ROLE OF THE JUDICIARY IS THE ONLY POLITICALLY CONTENTIOUS ISSUE ADDRESSED BY THE VC AND ODIHR. OTHER "ETHNIC HERITAGE" ISSUES SUCH AS THE STATUS OF THE ORTHODOX CHURCH(ES), WHAT TO CALL THE PREDOMINANT LANGUAGE IN MONTENEGRO, AND NATIONAL SYMBOLS REMAIN UNRESOLVED AS WELL. THESE ISSUES ARE LARGELY A SPLIT BETWEEN THOSE WHO SEE, AND WISH TO STRENGTHEN, A CORE "MONTENEGRIN" IDENTITY, AND THOSE WHO SEE THEIR IDENTITY AS "SERBIAN" IN NATURE.

110. (SBU) THE RIFT IN THE RULING COALITION, ONLY SOMEWHAT PATCHED BY THE GOM ACTION ON JUNE 12 (SEPTTEL), HAS IMPAIRED ALREADY WEAK OUTREACH EFFORTS TO CENTRIST PARTIES IN THE OPPOSITION. OPPOSITION VOTES WILL BE NEEDED IF THE GOM WISHES TO ADOPT THE CONSTITUTION WITHOUT A PUBLIC REFERENDUM. THE GOM HAS 41 VOTES IN THE 81 SEAT PARLIAMENT; THE CONSTITUTION MUST BE ADOPTED BY A 2/3 VOTE (54 VOTES) TO AVOID A REFERENDUM.

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